

ENA HEALTHCARE SERVICES UNIFIED MASTER SERVICE AGREEMENT

Client Name:	
Mailing and Notice Address:	
Contact Name, Phone and E-Mail Address:	

This MASTER SERVICE AGREEMENT ("Agreement") is by and between ENA Healthcare Services LLC, a Delaware limited liability company having its principal place of business at 618 Grassmere Park Drive, Suite 12, Nashville, TN 37211 ("Company"), and the Client identified above ("Client"), as of _____ (the "Effective Date").

In consideration for the mutual promises, covenants and agreements contained herein, Company and Client agree as follows:

SECTION 1: SERVICES

1.1 Services. Subject to the terms and conditions of this Agreement, Company shall provide Client with certain Services. Company's Services and pricing are described in the attached Schedules of Service(s) and/or Statement(s) of Work (the "Schedule(s)"), which may be entered into from time to time. As used herein, the term "Services" includes all services, software, products and deliverables provided by Company to Client, including but not limited to professional services and online services.

1.2 Product and Service Changes. The capabilities and services available through Company regularly change and expand. In order to improve and adapt the Services to these changing conditions, (i) Company may add, delete or change the Services, at its sole discretion, by providing thirty (30) days prior written notice to Client, and (ii) additions, deletions or changes to Schedules will be effective as of the date agreed upon by the parties in writing.

Contract Changes. During the term of this Agreement, Client may order Services via a Schedule based on the Services bid to the customer during its procurement process. The Customer may request changes in Service, including bandwidth and locations, during the contract term and such changes will be implemented subject to acceptance by Company. Company reserves the right to adjust the pricing offered for changes during the contract from the original bid price based on factors existing at the time of the new order (including remaining term, installation costs or any other applicable factor). Both parties will agree on the terms of Schedules before Company begins providing Services. Company may also, at its discretion, reduce pricing for any service during the contract term.

1.3 Non-Exclusive Arrangement. Client acknowledges and understands that this is a non-exclusive arrangement and nothing herein shall preclude Company from providing Services, deliverables, or related services to any third party, or from authorizing third parties to make Services available to their customers.

1.4 Service Availability. Services may be temporarily unavailable or limited because of capacity limitations and may be temporarily interrupted because of equipment modifications, upgrades, relocations, repairs, and similar activities. Company will use commercially reasonable efforts to deliver the most reliable service possible, without interruption. Company will notify Customer of any scheduled

maintenance, but may need to interrupt Services without notice to Customer in the event of an emergency.

SECTION 2: FEES AND PAYMENT TERMS

2.1 Fees. Client shall pay Company the fees set forth on each Schedule. Except for fees for Services delivered (as indicated in Schedule(s) attached hereto) and professional services, Client's payment obligations for the Services shall commence on the date on which the applicable Service is first made available for use by Client regardless of whether Client has commenced use of the Services. Client shall pay Company in U.S. dollars.

2.2 Taxes. All fees and charges hereunder shall be exclusive of, and Client shall be solely responsible for, any applicable taxes or levies, whether now in force or enacted in the future, applicable to the delivery of the Services hereunder, except for taxes attributable to the net income of Company.

2.3 Payment Terms. All recurring charges shall be due and payable no later than thirty (30) calendar days after the end of the month to which the charges pertain. All non-recurring charges shall be due and payable immediately as of the date on which Company commences providing the applicable Service, or as otherwise set forth in a Schedule. Client shall pay all charges indicated as due upon receipt of the invoice from Company, and payment shall be past due if not paid as of thirty (30) days after the invoice date. Client shall have thirty (30) days from receipt of invoice to reasonably dispute amounts or items charged. If Client disputes any part of an invoice, then Client may withhold such disputed amount from its payment but will notify Company in writing as to the specific amounts contested and the specific reasons therefor, in which case the parties shall attempt to amicably resolve said dispute. Unless otherwise agreed by the Parties in writing or in a Schedule, Company shall invoice Client on a monthly basis.

2.4 Special Payment Terms for Services Eligible for Universal Service Fund (USF) Funding. While USF funding is pending approval for any funding year, Company will extend to Client special payment terms for each active service eligible for USF. Company will calculate the payment amounts for each funding year, after the (i) Client completes the funding forms, and (ii) after the funding window closes. Payment amount will be calculated to match expected Client portion of total cost as if USF funding is approved as filed. Updates to the payment amounts will be recognized on the July 1st invoice each year following the funding forms being submitted. Company will invoice customer for full-service cost while USF is pending but only request payment for the payment amount.

2.5 USF Default. The occurrence of any of the following shall constitute a material default to Section 2.4 above. (a) Client's failure to pay any undisputed amount when due, if such failure continues for a period of fifteen (15) days after invoice due date. (b) Client's failure to complete and file any required funding paperwork in a timeframe that maximizes the likelihood of Client receiving the greatest amount of funding in each funding year or delays the collection of approved USF funding by Company. (c) Receipt of notice of denial of funding from USAC for any reason. Upon the occurrence of any material default, Company shall have the right to immediately deem Section 2.4 null and void, at which time Client's accounts will revert to the standard payment terms. Company may enforce its rights to declare a material default at any point after the material default has occurred unless Client has cured the material default to the satisfaction of Company.

2.6 Interest. Amounts not paid when due are subject to finance charges of one percent (1%) per month or the highest lawful rate, whichever is less. Payment of such finance charges does not excuse or cure late payment, and all payments received are first applied to finance charges.

2.7 Move or Transfer of Service. If Client relocates to another location in a Company market where the same Services are available, Client may move Services to the new location if the aggregate monthly recurring charges of the new Services equal or exceed the Services provided to Client by Company at the former location, subject to payment of installation charges for the new location, if applicable; however, pricing may vary by location, and Client's rates may increase or decrease. Early termination fees may apply in the event Client moves to a location not serviced by Company or Client ceases to do business. Services may not be transferred or resold, and the MSA, these Terms, and the Schedule(s) attached hereto may not be transferred or assigned, by operation of law or otherwise, without Company's prior written approval. Any attempted assignment or transfer without Company's prior written approval shall be void.

2.8 Government and Regulatory Fees. Any charges set forth herein or in any Schedule, proposal or quotation are exclusive of taxes, surcharges, assessments, or other fees including E-911 fees and government regulatory fees such as Universal Service Fees. No discount offered, if any, shall apply to taxes, surcharges, assessments, or government or regulatory fees. Company may adjust its rates and charges due to changes by regulatory authorities, or it may impose additional rates and charges in order to recover amounts it is required or permitted by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs ("Government and Regulatory Fees"). Examples of such Government and Regulatory Fees include, but are not limited to, Property Tax Charges, Carrier Access Charges, Carrier Surcharges, Universal Service Funding, Administrative Fees and other Cost Recovery Fees. Company will provide such notice to the customer as may be practicable but these charges are subject to change without notice.

2.9 Compliance with Federal, State and Local Procedures and Processes. Company complies with all federal, state and local procurement rules and regulations, and by this Agreement, Client acknowledges their duty to comply. If the Services provided under this Agreement qualify for Universal Service Fund discounts, Company will work with Client, where applicable, to follow Client's selected reimbursement process. Client acknowledges its responsibility for timely and full payment regardless of receipt of Universal Service funds.

2.10 Security; Collection. If Client is late with more than one payment, Company may, upon written notice to Client, require a security deposit or other reasonable assurances to secure Client's payment obligations hereunder. Client agrees to pay all costs and expenses associated with collecting delinquent payments, including reasonable attorneys' fees.

SECTION 3: CLIENT OBLIGATIONS

3.1 Acceptable Use Policy. Client shall at all times abide by Company's Acceptable Use Policy, as it may be amended from time to time. As of the execution of this agreement, the current Acceptable Use Policy is posted at the following URL: <http://www.ena.com/legal>. Client is responsible for ensuring that all of its employees, agents, contractors, customers, or others who use the Services through Client's account abide by the Acceptable Use Policy.

3.2 Client Obligations During Establishment of Service. Once Company schedules installation and agrees upon an installation time with Client, Client must be present with facilities available and fully accessible. If Company's technician arrives at the Client location and Client is not present or facilities are not available or accessible, or Client otherwise cancels or postpones installation without a 24-hour notice to Company, Company reserves the right to assess a "Client Missed Call" trip charge.

3.3 Interoperability with Client's Infrastructure. Company's Services are capable of being deployed across a wide set of pre-existing Client infrastructure, however Client is responsible for any upgrades of its pre-existing infrastructure necessary to establish and continue Service.

3.4 Protection of Client Premise Equipment ("CPE") Provided By Company. The Client shall be solely responsible and liable for any and all damage caused to the CPE, including, without limitation, any damage due to misuse, and vandalism, for the duration of the contract. At the expiration of the term of the contract or upon its early termination by either party to the contract, the Client shall continue to be solely responsible and liable for any and all damage caused to the CPE while such equipment remains at the Client location. Client will provide reasonable space and environmental conditions for any CPE, will do nothing to change the space or conditions without notice to Company and will at no time, move, adjust, alter or otherwise operate the Company CPE without prior consent of Company. Client will not attach any equipment to any Company CPE without express instructions or involvement of Company or utilize the Company CPE in anyway inconsistent with the service purchased from Company.

3.5 Internal Use. Subject to the terms and conditions set forth herein, Company authorizes Client to use the Services for its internal business purposes. Client acknowledges and agrees that it will be responsible for all end users of the Services, regardless of whether such users are employees, contractors, agents, or third parties, in each case with or without the Client's permission to use such Services.

3.6 Restrictions on Use. Client shall not and shall not permit others to reproduce, reverse engineer, de-compile, disassemble, alter, translate, modify, adapt, market, resell, or sublease any of the Services or any software or materials provided by Company in connection therewith.

3.7 Client Responsibility. Client acknowledges and agrees that it is solely responsible for the content of its transmissions which pass through the Services. Client also agrees it will not use the Services:

- (a) for illegal purposes;
- (b) to transmit threatening, obscene or harassing materials, or
- (c) to interfere with or disrupt other network users, network services or network equipment.

SECTION 4: CONFIDENTIAL INFORMATION

4.1 Confidential Information. "Confidential Information" means any and all tangible and intangible information (whether written or otherwise recorded or oral) of the disclosing party that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or (b) that the disclosing party designates as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation the pricing and terms of this Agreement. Neither party shall use for its own account or the account of any third party, nor disclose to any third party, any of the other party's Confidential Information.

4.2 Exceptions. Notwithstanding the above, the term "Confidential Information" shall not include any information that is either:

- (a) available from public sources or in the public domain, through no fault of the receiving party; or

- (b) received at any time from any third party without breach of a non-disclosure obligation to the disclosing party; or
- (c) readily discernible from publicly-available products or literature; or
- (d) approved for disclosure by prior written permission of a corporate officer of the disclosing party.

4.3 Mandated Disclosures. The receiving party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that the receiving party (i) gives the disclosing party reasonable written notice to allow the disclosing party to seek a protective order or other appropriate remedy (except to the extent the receiving party's compliance with the foregoing would cause it to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

SECTION 5: DISCLAIMERS AND LIMITATIONS OF LIABILITY

5.1 Disclaimer. The Company hereby warrants to Client that (a) the Services will be performed substantially in accordance with the Company service level documentation provided for such Services (if any), (b) the Services will be performed with reasonable care, and (c) the personnel providing the Services will have an appropriate level of training and experience. If the Services fail to conform to the foregoing warranty, Company shall use commercially reasonable efforts at its expense to re-perform the Service in compliance with this Agreement. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND FITNESS FOR A PARTICULAR PURPOSE

5.2 Consequential Damages Waiver. In no event will either party be liable or responsible to the other party for any type of incidental, punitive, indirect or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, interruption or loss of use of Services or equipment, arising from or relating to this Agreement or the Services, even if advised of the possibility of such damages, whether arising under any theory of contract, tort (including negligence), strict liability, or otherwise.

5.3 Limitation of Liability. Except for the willful misconduct of Company, Company will not be liable for unauthorized access to Client's transmission facilities or premise equipment or for unauthorized access to or alteration, theft or destruction of Client's data files, programs, procedures or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of Company's actions or inaction. Company's liability for damages to Client for any cause whatsoever, regardless of form of action, shall be limited to the amounts paid by Client to Company for the Service giving rise to the claim during the one year period preceding the incident giving rise to the claim for damages.

5.4 Insurance. Company intends to maintain the following insurance coverages during the Term of this Agreement:

- a) Worker's compensation insurance and any other insurance, to the extent required by Law, in all applicable jurisdictions;

b) Commercial general liability insurance with a limit of liability of at least one million U.S. dollars (\$1,000,000 USD) per occurrence; and

c) Errors and omissions insurance with a limit of liability of at least two hundred fifty thousand U.S. dollars (\$250,000 USD) per occurrence.

Upon written request, Company will furnish to Client insurance certificates and additional insured endorsements where requested by Client in writing. Such certificates shall provide that at least thirty (30) days' prior written notice of any policy cancellation or material change be given to Client.

5.5 Indemnification. Client agrees to defend, indemnify and hold Company, its officers, employees, agents, and affiliates, harmless from and against any claim or demand asserted by any third party due to or arising directly or indirectly out of Client's use of the Services or Client's breach of this Agreement.

SECTION 6: TERM AND TERMINATION

6.1 Initial and Renewal Terms. The Initial Term of this Agreement shall commence on the Effective Date and continue until all Schedule(s) are expired or terminated. Each circuit may have its own Term, depending upon when the circuit installation is completed, or service is initiated, as agreed to by the Parties in each relevant Schedule. Any voluntary extensions (Renewal Terms) contemplated in the Client's procurement documentation or Company's bid shall be communicated to Company before the expiration of the Initial Term and may not exceed five years. Renewal Terms may be specific to each circuit.

6.2 Termination.

(a) In the event that Company makes material changes to the Services covered by a Schedule attached hereto pursuant to Section 1.2 above which Client elects not to accept, Client may terminate an individual Schedule without penalty upon thirty (30) days written notice.

(b) The parties specifically agree that the damages which Company would incur arising from any breach or early termination of this Agreement or any Schedule(s) attached hereto by Company are based upon future facts and conditions which are difficult for the parties to presently predict, anticipate, ascertain or calculate. The parties further agree that such liquidated damages, as determined herein, are based upon the best efforts of the parties to estimate the nature and amount of Company's actual damages, are not penal in nature, and are intended to place Company in the same position it would have achieved, had this Agreement and its Schedule(s) been fully performed by the parties according to the original terms.

(1) Either party may terminate this Agreement if the other party materially breaches any term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice. If Company terminates this Agreement on account of a breach by Client, Client shall pay a termination fee equal to the minimum monthly charges hereunder multiplied by the number of months remaining in the then-current Initial or Renewal Term in all Schedule(s) attached hereto that have an unexpired term.

(2) Client may terminate one or more Schedule(s) without cause at any time, provided that Client pays a termination fee equal to the minimum monthly charges multiplied by the number of months remaining in the applicable term of all Schedule(s) that Client intends to terminate.

(c) Upon the effective date of expiration or termination of this Agreement or any of its Schedule(s): (a) Company will immediately cease providing the Services, (b) any and all payment obligations of Client under this Agreement or Schedule(s) will become due immediately, and (c) within fourteen (14) days of termination, Client shall return any confidential materials and documentation relating to the Services, and certify to Company that such has been deleted or destroyed. All indemnification obligations, together with all other provisions of this Agreement which may reasonably be interpreted as surviving the expiration or termination of this Agreement shall survive.

(d) In the event that Client terminates this contract before the Contract Expiration Date, Client shall be responsible for all remaining charges ("Early Termination Charges") under the contract. Early Termination Charges do not apply if, within 30 days of the termination, Company and Client agree to a contract for a new or upgraded circuit with total recurring and non-recurring circuit charges, during the period covered by the Early Termination Charges that equal or exceed the Early Termination Charges. If, within 30 days of the termination, Company and Client agree to a new or upgraded circuit with total recurring and non-recurring circuit charges that, during the period covered by the Early Termination Charge, do not equal or exceed the Early Termination Charges, the Early Termination Charges shall be reduced by the amount of those charges for the new or upgraded circuit during the period covered by the Early Termination Charge.

SECTION 7: INTELLECTUAL PROPERTY & PUBLICITY

7.1 Ownership. As between Company and Client, Company either owns all right, title and interest in and to or is authorized to use and license such use of the Services. Client shall neither receive nor retain any ongoing interest to the Services, including but not limited to any intellectual property rights relating to the Services. Elements of Company's website are protected by trade dress, trademark, unfair competition, and other laws and may not, unless otherwise permitted hereunder, be copied in whole or in part. No logo, graphic, or image from the website may be copied or retransmitted without Company's express written permission. The images, text, screens, web pages, materials, data, other content and information used and displayed on the website are the property of Company or its licensors and are protected by copyright, trademark and other laws. In addition to Company's rights in individual elements of the website, Company owns copyright or patent rights in the selection, coordination, arrangement and enhancement of any images, text, screens, web pages, materials, data, Content and other information used and displayed on the Website. Users may copy such images, text, screens, web pages, materials, data, Content and other information used and displayed on the Website for users' personal or educational use only, provided that each copy includes any copyright, trademark or service mark notice or attribution as they appear on the pages copied. Except as provided in the preceding sentence, none of such images, text, screens, web pages, materials, data, Content and other information used and displayed on the Website may be copied, displayed, distributed, downloaded, licensed, modified, published, reposted, reproduced, reused, sold, transmitted, used to create a derivative work or otherwise used for public or commercial purposes without the express written permission of Company.

7.2 Use of COMPANY's Name and Trademarks. All trademarks, service marks and trade names identifying Company or Company products or services (the "Marks") are the exclusive property of Company. Client shall take no action which may lessen the goodwill in the Marks. Client shall not use a Mark or the name of Company in any advertising, promotional material, or public announcement without the prior written approval of Company.

7.3 Use of Client's Name. Client acknowledges that use of the Services may require that Company include Client's name in registrations and administrative filings which are available to the public. In

addition, Client agrees that Company may include Client's name in Company marketing brochures and literature and indicate that Client is a Company customer.

SECTION 8: GENERAL PROVISIONS

8.1 Third Party Services. The Services may permit users to link to other websites, services or resources on the Internet, and other websites, services or resources may contain links to the Services. When users access third party resources on the Internet, users do so at users' own risk. These other resources are not under Company's control, and users acknowledge that Company is not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply Company's endorsement or any association between Company and their operators. Users further acknowledge and agree that Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource. It is users' responsibility to protect users' system from such items as viruses, worms, Trojan horses and other items of a destructive nature.

8.2 Import and Export Compliance. In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, Client agrees to be solely responsible for compliance related to the manner in which Client chooses to use the Services, including Client's transfer and processing of content and the provision of such content to others.

8.3 Force Majeure. Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party will give prompt written notice to the other party and will use commercially reasonable efforts to minimize the impact of the event.

8.4 Government Approvals. Client must exercise its rights under this Agreement with all necessary government approvals. Client must also comply with all applicable laws and regulations.

8.5 Changes in Laws and/or Government Regulations. This Agreement is based on the laws and government regulations in place at the Effective Date. Subsequent changes in any applicable laws or regulations may result in pricing changes and/or service changes that may automatically become a part of this Agreement.

8.6 Notice And Payment.

(a) **Writing Required.** Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party or mailed by certified, registered or Express mail, return receipt requested, or by overnight carrier with tracking. Notices to ENA shall be delivered or sent to the attention of Contract Administrator, 618 Grassmere Park Drive, Suite 12, Nashville, TN 37211. Notice to Client shall be delivered or sent to the above stated address.

(b) **Change of Address.** Either party may change the address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

8.7 Jurisdiction/Disputes. This Agreement shall be governed in accordance with the laws of the State of Tennessee, without regard to its or any other jurisdiction's laws governing conflicts of law. The parties hereby consent to and agree that the exclusive jurisdiction for any litigation regarding this Agreement shall be the state or federal courts sitting in Davidson County, Tennessee.

8.8 Assignability. Neither party may assign this Agreement, its Schedule(s) or the rights and obligations thereunder to any third party without the prior express written approval of the other party which shall not be unreasonably withheld. Notwithstanding the foregoing, Company may assign this Agreement in its entirety in connection with any sale of all or substantially all of its assets, or of the business division of Company through which the Services are provided.

8.9 Agreement Binding On Successors. Subject to the terms of Section 8.8, the provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

8.10 Waiver. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

8.11 Independent Contractors. The relationship between Company and Client under this Agreement shall be at all times one of contractor and client, respectively. Nothing herein shall be construed to place the parties in the relationship of partners, joint venturers, principal and agent, or employer and employee. Company shall determine the method and means of performing the Services hereunder and Company assumes all risks and liabilities arising therefrom. Company shall have no authority to act, make any representation, enter into any contract or commitment, or incur any liability for or on behalf of Client in any manner whatsoever.

8.12 Severability. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement or its Schedule(s).

8.13 Integration. This Agreement, Company's Acceptable Use Policy, and all Schedules constitute the entire understanding of the parties with respect to the subject matter hereof, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement. This Agreement shall not be modified or amended except in writing signed by the parties hereto.

8.14 Hierarchy. In the event of any conflict regarding the terms of this Agreement, addendum to this Agreement, Company's Acceptable Use Policy, or any Schedules, their terms shall control in the following order, from highest to lowest priority: (1) Schedules, (2) addendum to this Agreement, (3) this Agreement, and (4) Company's Acceptable Use Policy.

8.15 Counterparts; Imaging. This Agreement and all ancillary agreements referenced herein or executed in connection with this Agreement may be executed in one or more counterparts, and once combined shall constitute a single original. The parties agree that imaged or copied versions of such are fully enforceable, and original documents are not required for either party to enforce its rights thereunder.

[signatures on next page]

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

COMPANY:

ENA Healthcare Services, LLC

By: _____

Name: _____

Title: _____

Date: _____

CLIENT:

<<Client Legal Name>>

By: _____

Name: _____

Title: _____

Date: _____